MAY 3 1904
SUPREME COURT U.S.

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IN THE SUPREME COURT OF THE UNITED STATES.

No. 453 AND TWENTY-TWO OTHER CASES, NUMBERED FROM 454 TO 475, INCLUSIVE.

JOHN M. SLOAN, ET AL.,
APPELLANTS,

VS.

THE UNITED STATES, ET AL.,
APPELLEES.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

PETITION FOR REHEARING.

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OF THE
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Having carefully examined the Opinion of the Honorable Court we think with propriety we may ask the Court to consider whether this case be not one in which it will be proper to grant a re-hearing to the appellants on the ground:

First.—That the title to the land upon the Omaha Reservation claimed by the several appellants, and as alleged in the pleadings, arises by virtue of the Treaties of 1854 and 1865.

Second.—That the appellants, having made valuable

improvements upon the lands claimed by them under these Treaties, are entitled to a preference right under the Act of Congress of August 7th, 1882, to select the lands upon which their improvements are located.

Third.—A construction of these Treaties is necessarily involved in order to determine whether or not the appellants are entitled to *any* land upon this Reservation.

Fourth.—A Construction of the Treaty of 1865 is necessary in order to determine whether or not the appellants are entitled to the *particular* land selected by them and upon which they have made *valuable improvements.*

Fifth.—That the appellants are owners of undivided interests of land upon the Omaha Reservation by virtue of the Treaty of 1854, and the Act of August 7th, 1882, is merely the machinery of the Government whereby the land heretofore held in common is assigned to the members of the tribe in severalty.

Finally we respectfully suggest that the court again consider our Reply Brief and the Brief filed herewith.

Wherefore upon the foregoing grounds the appellants pray this Honorable Court to grant to them a re-hearing in their several cases.

H. C. BROME AND
THOMAS L. SLOAN,
Attorneys for Appellants.

I, Thomas L. Sloan, of Counsel for the appellants herein, do hereby certify that in my judgment the foregoing petition for a re-hearing is well founded and presents new matter not heretofore considered, and that the same is not interposed for delay.

THOMAS L. SLOAN.

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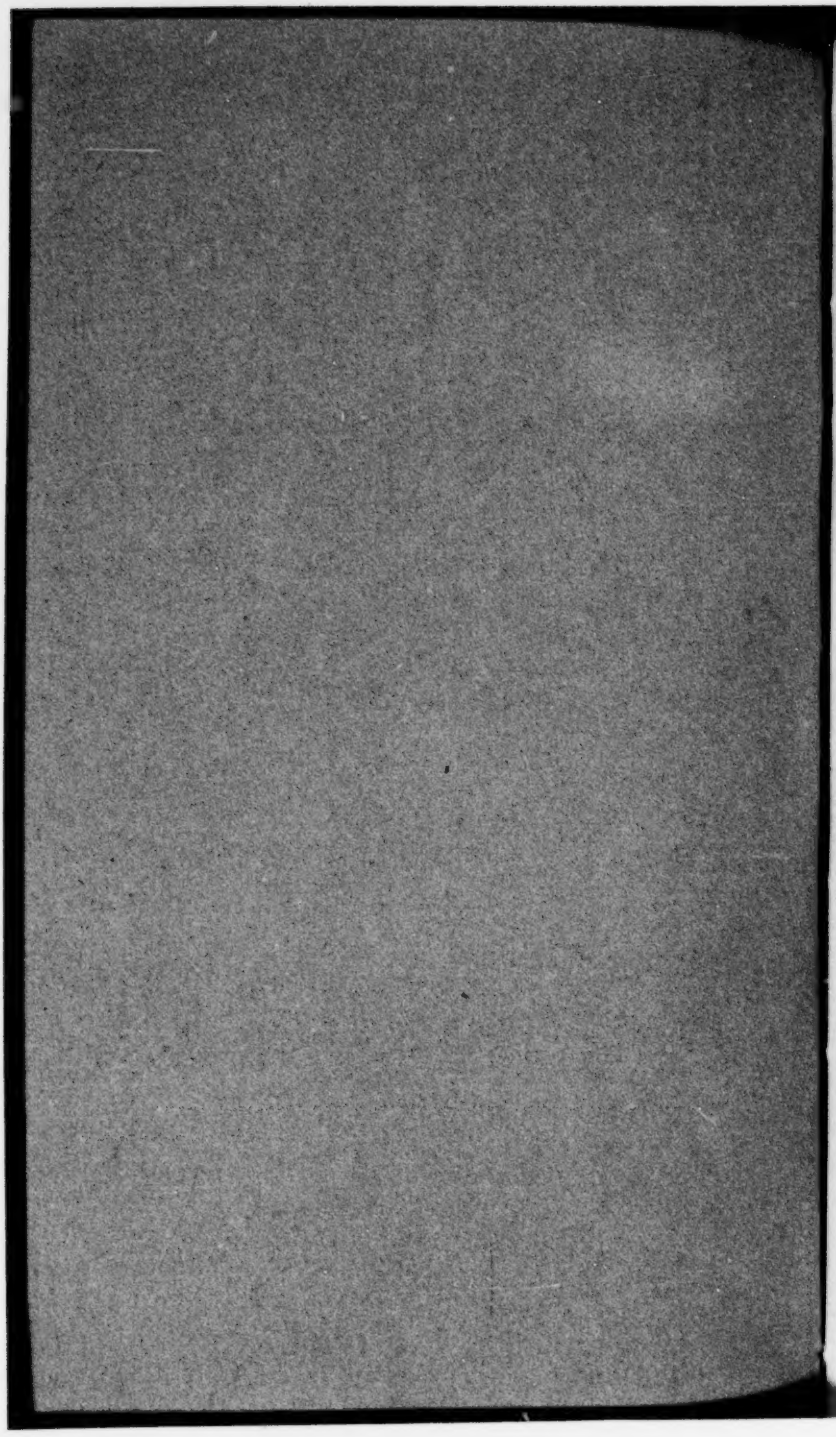
BRIEF ON PETITION FOR REHEARING.



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The Omaha Indian Reservation was created by the Treaty of March 16th, 1854, and by virtue of that Treaty, the appellants, as alleged in their several bills, have a vested interest in all of the tribal land. The fourth article of the Treaty of 1865 alleges the Omaha Indians are desirous of promoting settled habits of industry and enterprise among themselves by abolishing the *tenure in common* by which they hold their lands and by assigning limited quantities thereof *in severalty* to the members of the tribe.

The Act of August 7th, 1882, was passed for the purpose of making an actual division of the land to the respective owners thereof. "Which allotments shall be deemed and held to be *in lieu of* the allotments or assignments provided for in the fourth article of the Treaty with the Omahas, concluded March 6th, 1865, and for which, for the most part, certificates in the names of individual Indians to whom tracts have been assigned have been issued by the Commissioner of Indian Affairs as in said article provided. *Provided*, that any Indian to whom a tract of land has been assigned and certificate issued or *who was entitled* to receive the same under the provisions of said fourth article and who has *made valuable improvements thereon*, and any Indian who being entitled to an assignment and certificate under said article, has settled and made valuable improvements upon a tract assigned to any Indian who has never occupied or improved such tract, *shall have a preference right to select the tract upon which his improvements are situated for allotment under the provisions of this section.*"

The Treaty of 1865 is fundamental, and this preference right has been exercised as shown by the allegations in the several bills of the appellants and as sustained by the proofs.

The title of the several appellants to lands upon the Omaha Reservation arises by virtue of the Treaties of 1854 and 1865.

The Act of 1882 is merely a partition suit; its purpose being to give to each owner of an undivided interest in the real estate of the Reservation, his portion thereof in severalty.

A construction of these Treaties is absolutely neces-

sary in order to determine whether or not the appellants are entitled to any land upon this Reservation. A construction of the Treaty of 1865 is necessary in order to determine whether the appellants are entitled to the *particular* land selected by them and upon which they have made valuable improvements.

If it is found they are members of the tribe for whom the Omaha Reservation was created by the Treaty of 1854, then the Court is to determine to which class of allottees under the Act of August 7th, 1882, they belong.

As the actual title of the several appellants to the land upon the Omaha Reservation claimed by them in their respective bills rests directly under the Treaties of 1854 and 1865 it cannot be held the construction of these treaties is in "a merely incidental or remote manner drawn in question."

We still believe these cases come within the rule as established in

Mitchell vs. Furman, 180 U. S. 402, and in

Mobile Transportation Co. vs. Mobile, 187 U. S. 479.

"And it has been held by this court that where a Treaty admits of two constructions, one restrictive of rights that may be claimed under it, and the other favorable to them, the latter is to be preferred.

Hauenstein vs. Lynham, 100 U. S. 483-487."

Geofroy vs. Riggs, 133 U. S. 258-271.

Respectfully submitted,

H. C. BROME,

THOMAS L. SLOAN,

Attorneys for Appellants.